

IC 15-4-3.5

Chapter 3.5. Promotion of Agricultural Products

IC 15-4-3.5-1

Definitions

Sec. 1. As used in this chapter:

(a) "Agricultural commodity" means poultry, poultry products, cattle, dairy products, sheep, wool, mint, or soybeans.

(b) "Commercial quantity" means a quantity produced and marketed through commercial channels of trade.

(c) "Dean" means the dean of agriculture of Purdue University or his designee.

(d) "Commodity market development council" means a group representative of the commodity, referred to as the "council" in this chapter.

(e) "Handler" means any person who engages in the selling, marketing, or distribution of any agricultural commodity, which he has purchased for resale or which he is marketing on behalf of a producer, and shall include a producer who distributes any agricultural commodity which he has produced.

(f) "Processor" means any person engaged in the receiving, grading, packing, canning, freezing, drying, or other methods of preparation for market of agricultural commodities produced in Indiana for sale.

(g) "Producer" means any individual, firm, limited liability company, corporation, partnership, or unincorporated association engaged within this state in the business of producing for market or receiving income from any agricultural commodity in commercial quantities.

(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by Acts 1979, P.L.145, SEC.1; P.L.167-1985, SEC.1; P.L.119-1988, SEC.1; P.L.40-1993, SEC.24; P.L.8-1993, SEC.233.

IC 15-4-3.5-2

Marketing program; provisions

Sec. 2. Any marketing program proposed or adopted under this chapter may include any of the following:

(a) market development and research programs;

(b) market promotion, education and public relations programs;

(c) market information services; and

(d) the right to contract with qualified organizations, agencies or individuals for any of the activities listed in paragraph (a), (b), or (c) of this section. However, any commodity market development council organized under this chapter shall not undertake to establish, promulgate or fix the price of any commodity or in any way limit the production of any commodity nor shall the fees be used for political or legislative activity of any kind.

(Formerly: Acts 1975, P.L.135, SEC.1.)

IC 15-4-3.5-3

Commodity market development council; establishment;

petition; membership

Sec. 3. A representative group of not less than five percent (5%) of the producers of an agricultural commodity, may petition the dean for permission to establish a commodity market development council. This petition shall include:

(a) a statement of the area of production to be included; the area shall be statewide, except that it may be limited to a well defined smaller area where such area is the principal commercial producer in the state of the commodity;

(b) a statement of the general purposes of the commodity market development council program which may include research, education, market development, publicity, sales promotion and cooperation with other state, regional and national organizations;

(c) the amount of the fee that is desired to be collected for each designated unit of commercial quantities of the commodity;

(d) the method or methods to be used in the collection of the fee;

(e) the composition, qualification, terms of office, method of nomination, election, filling unexpired terms, expenses, and duties of the members of the council, but:

(1) the council shall consist of an odd number of not less than five (5) nor more than fifteen (15) members who shall serve not more than six (6) consecutive years and of whom the majority shall be producers to be selected by producers;

(2) the dean shall serve as an ex-officio member of the council; and

(3) the commissioner of agriculture or the commissioner's designee shall serve as an ex-officio member of the council;

(f) the method of conducting the referendum of the commodity producers either by mail or by polling place depending on the area and volume of the commodity.

(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by P.L.40-1993, SEC.25.

IC 15-4-3.5-4

Hearings; findings

Sec. 4. (a) Every hearing held under section 5 of this chapter shall be public and a permanent record shall be made of all testimony received. The dean shall conduct the hearing and may make the determination from the record.

(b) The dean shall give notice of the hearing by publication in trade journals and newspapers of general circulation in each area affected, at least ten (10) days prior to the hearing. All fees for initial organization shall be advanced in cash to the dean by the representative group and no monies shall be paid from state funds.

(c) The dean shall make and publish findings based upon the facts, testimony and evidence received at the public hearing and shall cause copies of his findings and decisions to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record.
(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by P.L.40-1993, SEC.26.

IC 15-4-3.5-5

Referendum among producers of commercial quantities; notice

Sec. 5. (a) If the director approves the petition, in whole or as revised, he shall call a referendum among producers of commercial quantities of the commodity to vote upon establishment of the proposed commodity market development program.

(b) Prior to the issuance of a notice of referendum on any proposed commodity market development program, the director shall establish the number of producers qualified of that particular agricultural commodity. The producers must register with the director and he shall maintain a list of those producers. A minimum of twenty percent (20%) of the producers must register before a referendum may be held. Any registration period for establishing, continuing, changing, or terminating a marketing program shall be established by the director after the director calls for a referendum. Postdating of a registration is unlawful and void. Such producer or handler lists shall be final and conclusive in making determinations relative to the assent of producers upon the issuance, amendment, or termination of a commodity market development program.

(c) The director shall publish a notice of referendum to the attention of producers in such newspapers or trade journals within the affected area as the director prescribes, and in addition, he may mail notice to all producers or handlers on his current list of producers.

(d) If the majority of those who actually vote is in favor of the adoption of the proposal in the petition, the director shall declare the proposal to be adopted.

(e) A proposal to change the amount of the fee to be collected or to make other major changes may be made by a two-thirds (2/3) vote of the council or by petition of twenty-five percent (25%) of the commodity producers. The proposal shall then be submitted to referendum under which the same percentages by number and production shall be required for approval as were required for establishment of the original market development program.

(f) A proposal to terminate a commodity market development program may be made by a majority of the council or by petition of two percent (2%) of the commodity producers. The proposed termination shall be submitted to referendum under which a simple majority of those voting shall be required for termination.

(g) No referendum to set up a market development council in a particular commodity or to change the amount of fee or to make other major changes or to terminate a commodity market development council may be held within twelve (12) months of a referendum conducted for a similar purpose for the same commodity.

(h) A referendum on the continuation of the council shall be conducted at least once every three (3) years by the director.

(i) Registration for a referendum on the continuation or repeal of a program shall be open to all eligible producers and not limited to those registered for the initial referendum.

(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by Acts 1979, P.L.145, SEC.2; P.L.168-1985, SEC.1.

IC 15-4-3.5-6

Advice of commodity markets development council to director

Sec. 6. The director shall be guided by the advice, recommendations and assistance of the commodity market development council in the collection and expenditures of funds, audits and refunds associated with the commodity market development program.

(Formerly: Acts 1975, P.L.135, SEC.1.)

IC 15-4-3.5-6.5

Payment of fee upon placement in commercial channel of trade

Sec. 6.5. The fee shall be paid at the time the final producer places the agricultural commodity in a commercial channel of trade. "Commercial channel of trade" means that series of transactions leading directly from the final producer of the agricultural commodity to the purchase of the agricultural commodity by a processor.

As added by Acts 1979, P.L.145, SEC.3.

IC 15-4-3.5-7

Fees; collection; penalty; individual commodity council market development fund; accounting statement

Sec. 7. (a) Any fee imposed under the commodity market development program shall be collected by the director from the producers or from the handlers or processors; except, ninety-seven percent (97%) of the fee imposed under the commodity market development program for cattle, dairy products, or soybeans shall be collected by the director from the producers or from the handlers or processors who may retain the remaining three percent (3%) as compensation for collecting the fee.

(b) If any market development fee is unpaid on the date on which the fee was due and payable, a penalty of one percent (1%) per month shall apply from and after that date until payment plus the penalty is received by the director. If, after due notice, any person defaults in any payment of the fee or penalties thereon, the amount due shall be collected by civil action in the name of the state of Indiana at the request of the director, and the person adjudged in default shall pay the costs of the action. The attorney general, at the request of the director, and, if requested by the attorney general, the prosecuting attorney of any county, in which a cause of action arose under the provisions for the collection of fees due and unpaid, shall institute proper action in the courts of this state for the collection of fees and penalties thereon due and unpaid.

(c) All fees shall be paid to the director to be credited to the "individual commodity council market development fund" which is hereby created. All money credited to the commodity council market development fund less administration expenses shall be expended by the director for the use and benefit of the commodity councils.

(d) At least annually, the director shall submit to the council a statement showing all receipts, administration expenses, refunds and the balance credited to the commodity council market development fund.

(e) Notwithstanding anything contained in this chapter to the

contrary, there shall be collected no more than one (1) fee per commodity, under this chapter and under a federal program for promotion or market development.

(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by Acts 1979, P.L.145, SEC.4; Acts 1980, P.L.22, SEC.8.

IC 15-4-3.5-8

Commodity market development council; organization; duties

Sec. 8. The commodity market development council shall with the help of the director:

- (a) elect a chairman and any other officers;
- (b) authorize the expenditure of a budgeted amount of the commodity council market development fund in the administration of the commodity market development program and in the collection of commodity market development fees; and
- (c) perform such other duties as may be necessary.

(Formerly: Acts 1975, P.L.135, SEC.1.)

IC 15-4-3.5-9

Refund of fees

Sec. 9. Any producer or handler may by the use of forms provided by the director, have the fees paid by him refunded, provided such request for refund is in the office of the director within one hundred eighty (180) days following the payments of such fees. A refund form shall be made available when payment is made. For the purpose of making an application for a refund, a producer shall be deemed the agent of all persons who have an interest in the agricultural commodity, provided, however, the interest of each person shall be indicated on the application form and paid accordingly.

(Formerly: Acts 1975, P.L.135, SEC.1.) As amended by Acts 1979, P.L.145, SEC.5.

IC 15-4-3.5-10

Audit of funds

Sec. 10. The state board of accounts shall audit the funds received and expended by the commodity council under this chapter.

As added by P.L.168-1985, SEC.2.